

Comment Summary and Responses  
 Comment Deadline: May13, 2014  
 Amendments to the Water Quality Control Plan for the Los Angeles Region to  
 Revise the Total Maximum Daily Loads (TMDLs) for Ballona Creek Metals TMDL and  
 Ballona Creek Estuary Toxic Pollutants TMDL

1. City of Beverly Hills
2. City of Los Angeles, Bureau of Sanitation
3. Heal the Bay and Los Angeles Waterkeeper

No.	Author	Comment	Response
1.1	City of Beverly Hills	<p>The City of Beverly Hills (“City”) submits the following comments to the Los Angeles Regional Water Quality Control Board’s (“Regional Board”) proposed amendment (“Proposed Amendment”) to the Water Quality Control Plan for the Los Angeles Region to Revise the Total Maximum Daily Loads for Metals in Ballona Creek and the Total Maximum Daily Loads for Toxic Pollutants in the Ballona Creek Estuary (“Ballona Creek TMDLs”).</p> <p>The City supports the Regional Board’s action, as part of the Proposed Amendment, to remove selenium from the Ballona Creek Metals TMDL, especially given that “[r]ecent data indicate that selenium is <b>not</b> present at levels exceeding existing numeric targets and is not impairing the designated beneficial uses.” Attachment A to Resolution No. R13-010, p. 2.</p> <p>As the September 2013 Regional Board Staff Report indicated on page 12:</p> <p>“Since the adoption of the 2002 303(d) List, the State Water Resources Control Board adopted the Water Control Policy for Developing California’s Clean Water Act Section 303(d) List, 2004 (Listing Policy). The Listing Policy uses a weight of evidence approach to evaluate whether to place waters on, or remove waters from, the 303(d) List (SWRCB, 2004).</p> <p>The re-examined data, described above, satisfies the data quality requirements of sections 6.1.4 and 6.1.5 of the</p>	Comment noted.

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		<p>Listing Policy and the frequency of exceedance, 9 exceedances out of 130 samples, does not exceed the allowable frequency listed in Table 4.1 of the Listing Policy. Table 4.1 is the “Maximum Number of Measured Exceedances Allowed to Remove a Water Segment from the Section 303(d) List for Toxicants.” <b><u>The data quality and the limited exceedances of the criteria would allow selenium to be delisted based on Table 4.1.</u></b></p> <p>Emphasis added.</p> <p>It is entirely appropriate to remove selenium given that it meets the State Water Resources Control Board’s Listing Policy for delisting a toxicant. The removal of selenium from the Ballona Creek Metals TMDL will enable the City and its fellow permittees to focus its limited resources on those pollutants that require the most immediate attention in the ongoing effort to improve the water quality of Ballona Creek.</p> <p>The City further notes that there appears to have been no opposition to the Regional Board staff’s proposal to delist selenium as one of the monitored compounds by any part before the Regional Board.</p> <p style="text-align: center;">*****</p> <p>Thank you for the opportunity to comment on the proposed amendments to the Ballona Creek TMDLs. The City is committed to working with the State Board and the Regional Board to achieve the mutual goals of improving water quality.</p>	
2.1	City of Los	<b>TECHNICAL COMMENTS LETTER FOR DRAFT</b>	Comment noted.

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	Angeles	<p><b><u>AMENDMENT TO THE BASIN PLAN TO REVISE THE TMDLS FOR METALS IN BALLONA CREEK AND TOXIC POLLUTANTS IN THE BALLONA CREEK ESTUARY</u></b></p> <p>The City of Los Angeles Bureau of Sanitation appreciates the opportunity to provide technical comments on the draft Amendment to the Basin Plan to revise the Total Maximum Daily Loads for Metals in Ballona Creek and the Total maximum Daily Loads for Toxic Pollutants in the Ballona Creek Estuary (Basin Plan Amendment.)</p> <p>The City supports the compliance with the Toxic TMDL via the alternative approaches provided in the Basin Plan including State's Sediment Quality Objectives (SQOs). The State approved SQO through multiple lines of evidence ensures the protection of all beneficial uses of the Ballona Creek (BC) and the estuary. The City appreciates the inclusion of the re-opener prior to the final compliance date. As recognized in the BPA for the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDLs (Harbor), it may be necessary to make adjustments to the TMDL to be responsive to new State policies including SQO Part II, the toxicity policy and results of special studies for Harbor and Ballona Toxics TMDLs that are expected to be completed within the next few years. The re-opener provides the opportunity for Ballona TMDLs to benefit from the finding of relevant State policies and scientific studies.</p> <p>The Bureau is committed to improving and protecting the local environment as evidenced by the leadership role the City has taken in implementing TMDLs, and in proactively implementing clean water projects such as Echo Park Lake Ecosystem Rehabilitation Project which was initiated prior to a TMDL, via the voter approved Proposition O ballot measure.</p>	

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3.1	Heal the Bay and Los Angeles Waterkeeper	<p>On behalf of Heal the Bay and Los Angeles Waterkeeper, we submit the following comments on the proposed State Water Board approval of amendments to the Water Quality Control Plan for the Los Angeles Region (“Basin Plan”) to revise the Total Maximum Daily Loads for Metals in Ballona Creek (“Ballona Creek Metals TMDL”) and the Total Maximum Daily Loads for Toxic Pollutants in the Ballona Creek Estuary (“Ballona Creek Estuary Toxics TMDL”). The scope of our comments is limited to the final versions of the Ballona Creek Metals TMDL and Ballona Creek Estuary Toxics TMDL Basin Plan amendments adopted by the Los Angeles Water Quality Control Board on December 15, 2013.</p> <p>As expressed in our November 14, 2013 comment letter to the Regional Board, we object to the new alternative compliance mechanism proposed in the draft Ballona Creek Metals and Ballona Creek Estuary Toxics TMDLs which allows dischargers regulated by storm water NPDES Permits to demonstrate compliance with the waste load allocations of the TMDLs by providing a quantitative demonstration that control measures and BMPs will achieve water-quality based effluent limits and implementing those control measures and BMPs, subject to Regional Board Executive Officer approval. This proposed alternative compliance is improper and unjustified and must be removed.</p> <p>Heal the Bay and Waterkeeper are supportive of BMPs and storm water and non-storm water control measures as an important method for ensuring dischargers comply with waste load allocations, effluent limits, and water quality standards. BMPs and other measures, however, cannot be used as a measure for compliance with water quality standards, effluent limits, and TMDLs. Providing quantitative demonstrations of BMP effectiveness and/or installation of Regional</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board has approved similar language in other TMDLs adopted by the Los Angeles Water Board, including the Ventura River Algae TMDL, and also approved TMDLs with similar approaches including the Los Angeles River Bacteria TMDL and trash TMDLs for Lake Elizabeth, Munz Lake, and Lake Hughes; Legg Lake; Machado Lake; Revolon Slough and Beardsley Wash; Ventura River Estuary; Malibu Creek; Los Angeles River; and the Santa Monica Bay. The State Water Board has reviewed the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 6.1 to R13-010, which states:</p> <p>The provisions providing compliance demonstration through “<i>quantitative demonstrations that control measures and best management practices will achieve WLAs and WQBELs consistent with implementation schedules for the TMDLs and subject to Executive Office approval</i>” allow for appropriate permitting flexibility and are consistent with the Regional Board’s undertakings in many</p>

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		<p>Board-approved BMPs do not ensure that TMDL wasteload allocations and water quality based effluent limits are actually met to achieve compliance with water quality standards in the impaired waterbodies.</p> <p>Further, the implementation of these BMPs and control measures in itself is insufficient to show water quality-based effluent limits and waste load allocations are met. The “reasonable assurance analysis” conducted under the LA MS4 Permit and endorsed by the Regional Board as evident in the Response to Comments on the Draft Ballona Creek Metals TMDL and Ballona Creek Estuary Toxic Pollutants TMDL Reconsiderations does not meet the requirements of the EPA 2002 and 2010 guidance on incorporation of TMDL waste load allocations into storm water NPDES permits. <i>See</i> NRDC, Los Angeles Waterkeeper and Heal the Bay Petition to the State Board for Review of the 2012 Los Angeles County MS4 Permit at 28-31. For these reasons, the alternative compliance mechanism incorporated into the Ballona Creek Metals and Ballona Creek Estuary Toxics TMDLs should be removed prior to State Board approval.</p>	<p>TMDLs and permits.</p> <p>Required monitoring will demonstrate if the WLA and targets are actually met and if they are not met according to the TMDL schedule, the TMDL or the applicable permits may be revised.</p> <p>Provisions to deal with the failure to meet targets or allocations may also be written into the applicable permits.</p> <p>The evidence to support its decision to allow the alternative compliance demonstration must be provided by the discharger or responsible party prior to Executive Officer approval or no such approval will be made.</p> <p>The TMDL establishes the WLAs that the permittees must achieve. The WLAs are supported by findings and evidence in the record of the TMDL and the proposed amendment. The proposed amendment provides alternatives to the method for demonstrating compliance with the WLAs, consistent with the Los Angeles County MS4 permit. The</p>

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		<p style="text-align: center; font-size: 48px; opacity: 0.3; transform: rotate(-30deg);">DRAFT</p>	<p>commenter appears to be suggesting that the Board may not provide alternative compliance methods without a demonstration that the alternative methods, in this case, control measures and BMPs, will in fact work to achieve the WLAs. Such a demonstration is not necessary at this stage. The permittees must demonstrate, if they propose to use such a compliance demonstration approach, that the control measures and BMPs have a reasonable assurance of achieving the WLAs. The permittees are subject to the Los Angeles County MS4 permit which provides for various methods to demonstrate compliance with water quality standards, including use of control measures and BMPs that are supported by an initial “Reasonable Assurance Analysis”. The TMDLs are implemented, in part, through the Los Angeles County MS4 permit. The proposed amendments to the TMDL s clarify that the permittees may demonstrate compliance with the WLAs in a manner consistent with the Los Angeles County MS4 permit.</p>

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		<p style="text-align: center; font-size: 48px; opacity: 0.3; transform: rotate(-30deg);">DRAFT</p>	<p>The LA County MS4 Permit contains sufficient provisions to ensure that BMP implementation is evaluated and adjusted as necessary to ensure adequate performance. Further, the State Water Board notes that the LA County MS4 Permit only provides that compliance may be demonstrated through BMP implementation (supported by a reasonable assurance analysis) for (1) interim water quality-based effluent limitations and associated receiving water limitations, and (2) final water quality-based effluent limitations and associated receiving water limitations only where the permittee(s) has retained all non-storm water and the volume of storm water from the 85<sup>th</sup> percentile 24-hour storm for the contributing drainage area. Where this retention volume is not achieved, compliance with final water quality-based effluent limitations and associated receiving water limitations must be demonstrated with monitoring data.</p> <p>The Regional Water Board may reconsider the TMDL, and may reopen the permit, in the future as necessary if WLAs and corresponding permit limitations are not attained.</p> <p>As noted, the commenter and others filed petitions requesting review by the State</p>

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			<p>Water Board of the Los Angeles County MS4 Permit. The action before the State Water Board is the approval of this revision to the TMDL, not the consideration of the LA County MS4 Permit. The State Water Board is in the process of reviewing the petitions.</p>
3.2	Heal the Bay and Los Angeles Waterkeeper	<p>Additionally, we believe a numeric target for toxicity and an associated waste load allocation should be included in the Ballona Creek Metals TMDL. To meet narrative objectives set forth in the Basin Plan for toxicity, the Ballona Creek Metals TMDL should include a numeric target for toxicity, similar to that seen in the Calleguas Creek Watershed Toxicity TMDL.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 6.2 to R13-010, which states:</p> <p style="padding-left: 40px;">When the Ballona Creek Metals TMDL was originally developed, staff concluded that <i>“the water column toxicity will be addressed by the WLAs for the listed metals”</i> (Staff Report, 2008 TMDL), which is still the Board’s conclusion. California’s Clean Water Act Section 303(d) list of impaired waters was updated in 2010 to move the toxicity listing for Ballona Creek to the “being addressed by a TMDL” section of the list.</p> <p>Toxicity was added to the Basin</p>



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			<p>Plan Amendment problem statement for clarity.</p> <p>In addition, water column toxicity has been added to the required monitoring for this TMDL.</p>

DRAFT